



Office of the Attorney General
State of Texas

October 13, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Eugenia A. Cano
City Attorney
City of Alvin
216 West Sealy
Alvin, Texas 77511

OR92-511

Dear Ms. Cano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16186.

The City of Alvin (the "city") has received two separate requests for eight categories of documents. The requested materials relate to the city, city manager, mayor and city council. Specifically, the requestor seeks "copies of any and all documents, invoices, memoranda and/or records relating to" travel expenses, detailed invoices of long distance telephone calls and other information that relates to the services performed by the city or various city officials.

You advise us that the city will comply with part of Request No. 6 by making the city council minutes available for inspection. You also state that searches by the city clerk, and the city's public works and finance departments are unable to locate any documents responsive to Request No. 7 nor the remainder of Request No. 6. The act does not require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 555 (1990); 452 (1986). Furthermore, if the requested information comes into existence after the request has been made, the city is under no duty to advise the requestor of this fact. See Open Records Decision No. 452 (request for certain information did not encompass survey prepared after request was received; requestee had no duty to inform requestor when survey was prepared).

You object to disclosing the remaining requested information and claim exemption from public disclosure under section 3(a)(3) of the Open Records Act.

Section 3(a)(3), the "litigation exception," excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information relevant to that litigation. Open Records Decision No. 551 (1990). You state that a discharged employee had retained an attorney, the requestor, for representation in the termination and post-termination hearings. The former employee then filed complaints with the Texas Commission on Human Rights and the Equal Employment Opportunity Commission (EEOC) charging discrimination based on national origin. You go on to assert that numerous subpoenas have been issued in connection with a criminal investigation of the former employee by the Brazoria County District Attorney's office and that, in addition to the city, the mayor, city council and city manager "may be parties to a lawsuit . . . for acts performed in their official capacities." You have adequately shown that civil litigation may be reasonably anticipated in relation to the discrimination charge. *See, e.g.,* Open Records Decision No. 386 (1983) (pendency of a complaint before the EEOC indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3)).

To be exempt from public disclosure, the requested information must be relevant to the anticipated litigation. Open Records Decision No. 551. You claim that the telephone bills and travel vouchers might be used in litigation to question the credibility of city officials, who may be parties to the lawsuit. We have examined the documents, and find no basis for your claim that the information could be used to attack the credibility of the city officials. *See* TEX. R. CIV. EVID. Rule 608. The documents are not on their face relevant to the issues in a discrimination suit. Accordingly, we conclude that they are not excepted from disclosure by section 3(a)(3).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-511.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/HJ/lmm

Ref.: ID# 16186
ID# 16492
ID# 16649

cc: Mr. A. G. Crouch
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